

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Judgment Reserved on : 14th January, 2022**
Judgment Delivered on : 25th January, 2022

+ CM(M) 964/2019 & CM No.28977/2019 (for Stay)

INDIRA KUMARI(DECEASED) THR LR Petitioner
Through: Mr. K. Sultan Singh, Senior Advocate
with Mr. Sunil Kumar, Advocate

versus

BIMLA RANI (DECEASED) THR LRS & ORS Respondents
Through: Mr. R.S. Sahni, Advocate

+ CM(M) 965/2019 & CM No.28991/2019 (for Stay)

INDIRA KUMARI (DECEASED) THR LRS Petitioner
Through: Mr. K. Sultan Singh, Senior Advocate
with Mr. Sunil Kumar, Advocate

versus

BIMLA RANI(DECEASED) THR LRS & ORS Respondents
Through: Mr. R.S. Sahni, Advocate

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J.

[VIA VIDEO CONFERENCING]

1. The present petitions under Article 227 of the Constitution of India impugn the judgment dated 2nd February, 2019 passed by the Rent Control Tribunal, South East, Saket Courts, New Delhi (hereinafter '*Tribunal*') in

RCT ARCT Nos. 3/2018 and 4/2018, whereby the appeals filed on behalf of the respondents (hereinafter '*tenants*') against the judgments dated 23rd December, 2017 passed by the Rent Controller, South, Saket Courts, New Delhi (hereinafter '*Rent Controller*') have been allowed.

2. Notice was issued in the present petitions on 3rd July, 2019.

3. Vide the judgments dated 23rd December, 2017, the Rent Controller had allowed the eviction petitions filed on behalf of the petitioner (hereinafter '*landlord*') under Section 14(1) (a) of the Delhi Rent Control Act, 1958 (hereinafter '*DRC Act*') and had further observed that the benefit under Section 14(2) of the DRC Act cannot be given to the tenants in these cases. The said judgments of the Rent Controller were challenged by the tenants by way of appeals before the Tribunal to the limited extent of the denial of benefit of Section 14 (2) of the DRC Act to the tenants and the said appeals have been allowed by the impugned judgment.

4. CM(M) 964/2019 is in respect of the mezzanine floor and CM(M) 965/2019 is in respect of the ground floor of the property bearing No.HS-8, Kailash Market, Kailash Colony, New Delhi (hereinafter '*demised premises*'). Since both the petitions arise from the same impugned judgment of the Tribunal, the same are being taken up together.

5. Arguments of the counsels were heard on 14th January, 2022 and both the parties were directed to file their written submissions/judgments relied upon by them. The counsel for the landlord has filed judgments relied upon by the landlord and the counsel for the tenants has filed a note distinguishing the said judgments.

6. Brief facts necessary for deciding the present petitions are set out below:

6.1 The demised premises were let out by the deceased landlady, Lt. Smt. Indira Kumari by way of rent deed dated 7th October, 1968 in favour of Sh. Manmohan Singh Sarna, the deceased husband of Lt. Smt. Bimla Rani at a rent of Rs.100/- per month.

6.2 After the death of Sh. Manmohan Singh Sarna in 1995, the tenancy devolved upon Lt. Smt. Bimla Rani and other legal heirs of Sh. Manmohan Singh Sarna.

6.3 Since rent in respect of the demised premises was not paid by the tenant to the landlady with effect from July, 1995, a legal notice dated 29th January, 1996 was served by the landlady upon the legal heirs of deceased Sh. Manmohan Singh Sarna. The said notice was duly replied vide reply dated 19th March, 1996 wherein the factum of tenancy was admitted.

6.4 On 3rd September, 1997 the deceased landlady filed eviction petitions before the Rent Controller under Section 14 (1) (a) of the DRC Act against the legal heirs of Sh. Manmohan Singh Sarna.

6.5 The said eviction petitions were contested by the tenants by filing written statements to the petitions, wherein defence was taken on behalf of the tenants that the landlady had entered into an agreement to sell in respect of the demised premises and therefore, there was no relationship of landlord and tenant between the parties.

6.6 In 1998, the deceased landlady filed a criminal complaint being FIR no. 38/98 against the tenants and chargesheet in respect thereof has been filed before the competent Court. In the said criminal proceedings, the police also filed report of the FSL which shows that the signature of deceased landlady has been forged on the agreement to sell and other documents relied upon by the tenants.

6.7 The tenants also filed a suit for specific performance which has been adjourned *sine die* at the request of the tenants.

6.8 The Rent Controller vide judgments dated 23rd December, 2017 allowed the eviction petitions filed on behalf of the landlord under Section 14(1) (a) of the DRC Act holding that:

- (i) Smt. Indira Kumari was the owner of the property and after her demise, her legal heir, Sh. Ajit Singh became the owner of the demised premises and relationship of landlord and tenant stands proved in terms of the rent agreement dated 7th October, 1968.
- (ii) Rent due was not paid from July, 1995 till the date of filing of the petitions.
- (iii) Demand notice was duly served by the landlord upon the tenants.
- (iv) The tenants neither paid nor tendered the arrears of rent within two months from the date of service of the demand notice.

Based on the above, it was observed that all the ingredients of Section 14 (1) (a) of the DRC Act have been proved by the landlord and that the landlord is entitled to recovery of arrears of rent from July, 1995 till date of the judgment of the Rent Controller as also future rent till the date of eviction the tenants from the demised premises, with tenants being entitled to set off the rent already deposited in the court from the arrears of rent accrued till the date of passing of the aforesaid judgment.

7. The Rent Controller denied the benefit under Section 14(2) of the DRC Act to the tenants by holding/observing that (i) the tenants did not approach the Court with clean hands; and (ii) the tenants claimed that the demised premises had been purchased by them from the deceased landlady

by their predecessor Lt. Sh. Manmohan Singh Sarna vide agreement to sell, GPA and affidavit dated 1st March, 1988, but the aforesaid documents have been found to be forged and fabricated as per FSL Report dated 1st February, 1999.

8. To arrive at the aforesaid conclusion, the Rent Controller relied upon the following judgments:

- (i) *S. Makhan Singh V. Smt. Amarjeet Bali* 154 (2008) DLT 211, confirmed in judgment *Naeem Ahmad Vs. Yashpal Malhotra (D) through LRs and Anr.* 2012 SCC OnLine Del 1189;
- (ii) *V. Dhanapal Chettiar Vs. Yesodai Ammal* (1979) 4 SCC 214;
- (iii) *Kurella Naga Druva Vudya Bhaskara Rao Vs. Galla Jani Kamma* (2008) 11 SCALE 160; and
- (iv) *Abdulla Bin Ali Vs. Galappa* (1985) 2 SCC 54.

Accordingly, eviction order was passed against the tenants.

9. The aforesaid judgments of the Rent Controller were challenged by the tenants by way of filing appeals before the Tribunal only to the extent of the Rent Controller not giving benefit under Section 14(2) of the DRC Act to the tenants.

10. In the impugned judgment dated 2nd February, 2019, the judgments relied upon by the landlord before the Rent Controller were distinguished by the Tribunal by observing as under:

“10. I have gone through the case law cited by the learned Rent Controller in the impugned order. In my view, the said case law pertains to a different situation and the present proceedings fall beyond the same. In all those cases, broadly speaking the circumstances were that the landlord issued notice of termination of tenancy, in reply where to the tenant denied the jural relationship of tenancy and/or set up claim of ownership

and thereafter, when the landlord filed civil suit for recovery of possession of the property, the tenant was held not entitled to set up a plea of protection under the rent control laws. It is in that backdrop the Hon'ble Supreme Court of India and Hon'ble High Courts took a view that having denied the relationship of tenancy, the suit defendant acquired a status of trespasser and was not allowed to approbate and reprobate. In the present case, that is not the situation.

11. The judicial precedents cited by the learned Rent Controller in the impugned order would have been applicable if after filing of the written statement of the present appellants, in which they denied the relationship of tenancy, the present respondent had withdrawn the eviction petition and filed a civil suit for recovery of possession. It is in such suit that the present appellants would not have been able to claim protection under Delhi Rent Control Act."

11. It was further observed by the Tribunal that (i) allegations with regard to the agreement to sell and attendant documents being forged is yet to stand the test of trial and the trial before the Criminal Court is still pending; (ii) merely because the tenants got their suit for specific performance adjourned *sine die*, it cannot be assumed that the tenants wanted to conceal the truth, as by proceeding with the suit, they did not want to prejudice their case with the criminal prosecution.

12. In view of the above, the appeals filed by the tenants were allowed and impugned judgments passed by the Rent Controller were set aside.

13. Senior counsel appearing on behalf of the landlord relies upon the findings in the judgments passed by the Rent Controller and submits that there was no basis for the Tribunal to reverse the said findings arrived at by the Rent Controller. He contends that once the case set up by the tenant in the eviction proceedings is that he is not the tenant and is a purchaser of the

demised premises, the benefit under Section 14(2) of the DRC Act cannot be given to him as the said protection is only in respect of *bona fide* tenants.

14. Besides the judgments relied upon in the judgments passed by the Rent Controller, reliance is also placed on behalf of the landlord on the following judgment in :

- (i) ***S. Makhan Singh*** (supra)
- (ii) ***Vijayan Vs. Harinder Kaur*** 230 (2016) DLT 45

15. On the other hand, counsel appearing on behalf of the tenants supports the findings in the impugned judgment that the judgments relied upon by the landlord as well as by the Rent Controller are not applicable in the facts of the present case. He has made the following submissions:

- (i) In view of the stand taken by the tenants in the written statement before the Rent Controller, the remedy of the landlord would have been to file a civil suit for possession and had such a civil suit been filed, the tenants were precluded from taking a defence under Section 50 of the DRC Act.
- (ii) Once an eviction petition has been allowed under Section 14(1)(a) of the DRC Act, benefit of Section 14(2) of the DRC Act has to be given to the tenant.

16. After hearing counsels for the parties, the only issue to be decided in the present petitions is whether the benefit of Section 14(2) of the DRC Act ought to be given to the tenants in the facts of the present case.

17. In this regard, I proceed to deal with the judgments relied upon by the Rent Controller while passing the judgments dated 23rd December, 2017.

18. In ***Abdulla Bin Ali*** (supra), it was held by the Supreme Court that when the defendants denied the title of the plaintiff and the tenancy, the civil

suit filed on behalf of the plaintiff/landlord was maintainable before the civil court and the plaintiff/landlord could not be relegated to the revenue court. Paragraphs 6 and 7 of the said judgment are relevant and are set out as under:

“6. In our opinion the High Court was not quite correct in observing that the suit was filed by the plaintiffs-appellants on the basis of relationship of landlord and tenant. Indeed, when the defendants denied the title of the plaintiffs and the tenancy the plaintiffs filed the present suit treating them to be trespassers and the suit is not on the basis of the relationship of landlord and tenant between the parties. It is no doubt true that the plaintiffs had alleged that Defendant 2 was a tenant but on the denial of the tenancy and the title of the plaintiffs-appellants they filed a suit treating the defendant to be a trespasser and a suit against a trespasser would lie only in the civil court and not in the Revenue Court.

7. We are, therefore, of the considered opinion that on the allegations made in the plaint the suit was cognizable by the civil court and that the High Court has erred in law in non-suiting the plaintiffs-appellants on the ground that the civil court had no jurisdiction.”

19. In *V. Dhanapal Chettiar* (supra), the question before the Supreme Court was whether in order to get an order of eviction against the tenant under the rent control laws, a notice was required to be given under Section 106 of the Transfer of Property Act, 1882. The Constitution Bench came to the conclusion that it is not obligatory to issue a notice under Section 106 of the Transfer of Property Act, 1882 to initiate proceedings for eviction under the State rent control laws.

20. In *Kurella Naga Druva* (supra), while relying upon the judgment in *Abdulla Bin Ali* (supra), the Supreme Court observed that where the

defendant denies the title of the plaintiff, the only remedy of the plaintiff was to file a civil suit to obtain possession from the trespasser.

21. In *S. Makhan Singh* (supra), a Single Judge of this Court observed that once a tenant denies the title of landlord, then by virtue of Section 111(g) of the Transfer of Property Act, 1882 the relationship of landlord and tenant comes to an end and therefore, the remedy of the landlord is to file a civil suit for possession. The observation of the Single Judge as set out in paragraph 5 of the judgment is reproduced below:

“5. A tenant has been given protection under Delhi Rent Control Act from eviction only where the jurial relationship of tenant and landlord was not disputed and the tenant claims himself to be the tenant and not the owner. A perusal of Section 14, which gives protection to a tenant against eviction, clearly shows that this protection is available only to the person who is undisputedly a tenant and does not claim himself to be the owner of the premises. The moment a person refuses the title of the landlord and claims title in himself he ceases to be a tenant in the eyes of law and the protection of Delhi Rent Control Act is not available to him. Section 111 (g) of Transfer of Property Act provides that a lease of immovable properties come to an end by forfeiture in case of lessee renouncing his character as such by setting up a title in a third person or claiming title in himself. Thus, once a lease stands forfeited by operation of law, the person in occupation of the premises cannot take benefit of the legal tenancy. This provision under Section 111 (g) is based on public policy and the principle of estoppel. A person who takes premises on rent from landlord is estopped from challenging his title or right to let out the premises. If he does so he does at his own peril and law does not recognize such a person as legal tenant in the premises. A lease may come to an end by termination of lease by or by efflux of time. Where the rent is below Rs. 3,500/-, a landlord cannot recover possession from tenant whose term of lease comes to an end or whose tenancy is terminated by a notice because such a tenant is a protected tenant. The landlord can recover possession only if the case falls within the ambit of

Section 14 of DRC Act. Where a tenant repudiates the title of the landlord and does not recognize him as landlord or as a owner of the premises, the protection from eviction under Delhi Rent Control Act is not available to him. Where the tenant does not recognize anyone as landlord or owner and claims ownership in himself he cannot seek protection of Delhi Rent Control Act against the true landlord or owner. The Trial Court therefore rightly held that the petitioner was not entitled to protection under Section 50 of Delhi Rent Control Act.

22. In the case of *Naeem Ahmad* (supra), the issue before a Division Bench of this Court was whether a civil court would have jurisdiction in view of the stand taken by the tenant denying landlord – tenant relationship. In the said case, the landlord had filed a civil suit for recovery of possession on the ground of tenant being a trespasser in view of the stand taken by the tenant denying the landlord – tenant relationship in its reply to the demand notice issued by the landlord. After analysing the judgments in *S. Makhan Singh* (supra), *V. Dhanapal Chettiar* (supra), *Kurella Naga Druva* (supra) and *Abdulla Bin Ali* (supra), the Division Bench came to the conclusion that the suit was maintainable before the civil court and was not barred under the provisions of Section 50(4) of the DRC Act. The observations of the Division Bench as contained in paragraph 12 of the judgment is reproduced below:

“12. As aforesaid, in *Kurella’s* case (supra) and *Abdulla Bin Ali’s* case (supra) when the tenants deny the title of the landlord and the tenancy, the suit filed for recovery of possession is not on the basis of the relationship of landlord and tenant between the parties, and would lie only in the civil suit and not otherwise. In the present case also it is observed that in response to the legal notice, the respondent no.1 denied the relationship of landlord and tenant and denied that the appellant had let out the premises in suit to the respondent no.1. Consequently, the respondent no.1 had repudiated and renounced the relationship of landlord and

tenant and set up his own title in the property. Therefore, the appellant had filed the suit for recovery of possession in the civil court since the occupation of the respondent no.1 had become unauthorized and that of a trespasser.”

23. In addition, the landlord also placed reliance on judgment of the Single Judge of this Court in **Vijayan** (supra). In the said case, the tenant claimed title of the suit premises on the basis of adverse possession and this Court observed that once the tenant chooses to claim ownership of the suit property, the protection under the DRC Act will not be available. Therefore, the suit filed on behalf of the landlord was maintainable and decreed. The plea of the tenant that the suit was barred under DRC Act was rejected.

24. None of the aforesaid judgments support the case of the landlord that protection of Section 14(2) of the DRC Act would not be available to a tenant against whom eviction order has been passed under Section 14(1) (a) of the DRC Act. In fact, none of the aforesaid judgments deal with the aspect of protection under Section 14(2) of the DRC Act. The common thread running through the said judgments is that when the title of landlord is disputed by the tenant and/or relationship of the landlord-tenant is denied, landlord would be entitled to file a civil suit against the tenant and in the said civil suit, the tenant would not be permitted to raise the ground that the said civil suit is barred under the provisions of Section 50 of the DRC Act. In fact, in all the aforesaid decisions, the landlord had filed a civil suit for possession. Therefore, the Rent Controller wrongly applied the aforesaid judgments to deny the benefit of Section 14(2) of the DRC Act to the tenants. The Tribunal has correctly appreciated the ratio of the aforesaid judgments and has rightly observed in paragraphs 10 and 11 of the

impugned judgment that the aforesaid judicial precedents would not come to the aid of the landlord.

25. In the present case, Rent Controller passed an eviction order against the tenants on the basis that there exists a landlord-tenant relationship between the parties. Once having done so, the statutory benefit under Section 14(2) of the DRC Act had to be mandatorily provided to the tenants as the provisions of Section 14(2) of the DRC Act are mandatory and not discretionary in nature. It has been correctly observed in the impugned judgment that in view of the denial of the landlord-tenant relationship by the tenants in their written statement before the Rent Controller, the remedy of the landlord was to file a civil suit for possession and in the said civil suit, the tenants would be precluded from invoking provisions of Section 50 of the DRC Act.

26. In view of the above, there is no infirmity in the impugned judgment passed by the Tribunal that requires interference by this Court in exercise of its powers under Article 227 of the Constitution of India.

27. The petitions are dismissed.

JANUARY 25, 2022

Sakshi R./at/dk

AMIT BANSAL, J.